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10 Attorneys for Defendant
11 CHRISTOPHER ABLETT

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14 UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA, No. CR 09-00749 RS
17 Plaintiff,

18 vs. DEFENDANT'S OBJECTIONS TO
19 CHRISTOPHER ABLETT, COCONSPIRATOR STATEMENTS
20 Defendant.

Trial Date: January 17, 2012
Time: 9:30 a.m.
Court: Courtroom 3, 17th Floor

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28 Defendant Christopher Ablett, through undersigned counsel, hereby submits his objections
to the government's proffer of 104 hearsay statements that it seeks to admit under Fed.R.Evid.
801(d)(2)(E), the rule that admits statements of coconspirator made during and in furtherance of a
conspiracy as non-hearsay. The list of proffered co-conspirator statements is attached to this
motion as Appendix A.¹

¹ The appendix is an exact copy of the list provided by the government on November 30, 2011, except that defense counsel has assigned numbers to the statements in the list to facilitate

1 A coconspirator's statement may be admitted against a defendant where the prosecution
 2 shows by preponderance of the evidence that (1) the conspiracy existed when the statement was
 3 made; (2) the defendant had knowledge of, and participated in, the conspiracy; and (3) the
 4 statement was made "in furtherance of" the conspiracy. *United States v. Bowman*, 215 F.3d 951,
 5 at 960-61 (9th Cir. 2000) (citing *Bourjaily v. United States*, 483 U.S. 171, 175) The court has also
 6 held that "[m]ere conversations between coconspirators, or merely narrative declarations among
 7 them, are not made 'in furtherance' of a conspiracy. Rather, to be 'in furtherance' the statements
 8 must further the common objectives of the conspiracy or set in motion transactions that are an
 9 integral part of the conspiracy." *United States v. Yarbrough*, 852 F.2d 1522, 1535 (9th Cir.1988)
 10 (citations omitted).

11 Most of the Ninth Circuit cases interpreting whether certain statements are mere
 12 conversations or narrative declarations of past events or whether they were made in furtherance of
 13 a conspiracy have been restricted to drug cases where a coconspirator might mention in passing
 14 conversation the identity of their source of drug supply. See, e.g., *United States v. Larson*, 460
 15 F.3d 1200, 1211-12 (2006); *United States v. Paris*, 827 F.2d 395, 400 (9th Cir.1987).

16 In this case, however, the government is seeking to admit statements made by members of
 17 the Mongols Motorcycle Club over a period of years, many of which are narratives of past
 18 uncorroborated crimes supposedly committed by or against Mongols involving members of other
 19 motorcycle clubs, or expressions of wanting to commit violence against other persons or
 20 property. Many of these statements are made at chapter meetings, while others are made during
 21 social meetings.

22 Defendant objects in general to the admission of any co-conspirator statements, since
 23 defendant has repeatedly contended that he was not a member of any "Mongols gang" criminal
 24 conspiracy as alleged in the indictment, but was merely a member of the Modesto chapter of the
 25 Mongols Motorcycle Club at the time of the incident in September 2008, and being a member of
 26 the Mongols was and is not a crime.

27 _____
 28 discussion of defendant's objections.

1 Pursuant to the Court's order at the last hearing on January 4, 2012, defendant submits a
2 detailed list of specific objections to the form of notice of coconspirator statements provided by
3 the government on November 30, 2012.

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5 STATEMENT NO. BASIS FOR OBJECTION

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7 P. 2, #1

Date, 2006-08, is not specific adequate notice; no recording
is linked to these statements; statement as to "history of the
Mongols" is not sufficiently specific to give adequate notice
as to what constitutes the "statement". Is the government
restricted to the examples given in the notice, or by using
the word "including" in their notice, do they intend to
introduce other statements? This "statement" appears to be
merely an inadmissible narration of past events or idle
conversation about the lore and history of the Mongols
Motorcycle Club, not the "Mongols Gang" charged in the
indictment. It is not in furtherance of any conspiracy and
the government's claim of being "necessary for new
members to know" as being in furtherance of a conspiracy is
both vague and so broad as to encompass and admit any
statement about anything that a member might "need to
know", justifying it as some kind of "history." Finally, this
kind of statement is more prejudicial than probative, as
members' accounts of past club history may often be
boastful untrue bravado, often colored with vulgar
language. The statements are not reliable statements of club
history. This is an attempt to use selected statements over a
period of time in order to tell the jury the government's

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edited version of the history of the Mongols.

P. 2, #2 Date, 2006-08, is not specific adequate notice; statement as to “unwritten rules” of the Mongols is not sufficiently specific to give adequate notice as to what constitutes the “unwritten rules”. Is the government restricted to the examples given in the notice, or by using the word “including” in their notice, do they intend to introduce other unwritten rules, for which the defense has no notice?

P. 2, #3 Date, 2006-08, is not specific adequate notice; the statements as to “longstanding rivalry with the Hells Angels” and “mutual hatred” is not sufficiently specific, and appears to be an inadmissible narration of past events or idle conversation not in furtherance of any conspiracy. Finally, these kind of statements are more prejudicial than probative, as members’ accounts of the rivalry in the past may often be boastful untrue bravado, often colored with vulgar language. The statements are not reliable statements of any alleged rivalry with the Hells Angels.

P.2, #4 Date, 2006-08, is not specific; the declarant “various members of the Mongols” is not specific; and it is more prejudicial than probative, as defendant has never been awarded those “patches.”

P.2, #5 Statement appears to be an inadmissible narration of past events or idle conversation not in furtherance of any

conspiracy. There is no independent confirmation that this event ever occurred, and is more prejudicial than probative.

P.2, #6

Date is obviously wrong, and thus cannot be linked to any report of investigation. Moreover, statement appears to be an inadmissible boasting, narration of past events or idle conversation not in furtherance of any conspiracy, and more prejudicial than probative, as there is no independent confirmation that this event ever occurred.

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P.2, #7

Date is not specific, location is not specific. The statement statement is not in furtherance of any transaction or criminal conspiracy, as it is not a solicitation to commit a crime. Defendant objects for reasons stated earlier in motion to exclude evidence of a legal defense fund. If this evidence is admitted, then defendant requests that the court caution the jury, at the time of the admission of the statement, that no such funds were ever solicited for Christopher Ablett.

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P.3, #8

Date, 2006-08, is not specific; statement is not in furtherance of a conspiracy, but is instead a way of warning members that other persons might retaliate against them if the member is seen wearing certain clothing. Contrary to government's claim as to how the statement furthers the conspiracy, there is nothing in the "Code 55" summary to show that a Code 55 is in any used to "pursue attacks on rivals"; finally, it is more prejudicial than probative, as it uses language such as "code" to imply a covert and sinister

- 1 to something that is nothing more than a warning to
2 members to avoid violent confrontations.
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5 P.3, #9 Date, 2006-08, is not specific; declarant "Durango" is not a
6 clearly identified person; statement as to offering to sell
7 unspecified quantities of drugs at unspecified dates is not
8 sufficiently specific notice; the drug dealing is not alleged to
9 be connected to the Mongols Club, is not in furtherance of
10 any conspiracy, and appears to be more prejudicial than
11 probative.
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14 P.3, #10 Date, 2006-08 is not specific; the location of the statement,
15 such as a club meeting or a coffee shop, is not specific; the
16 statement appears to be idle conversation not in furtherance
17 of any conspiracy, and a warning to avoid violence rather
18 than a plan to commit a crime, and is more prejudicial than
19 probative.
20
21 P. 3, #11 Date, 2006-08, is not specific; the statement is not specific,
22 and appears to be idle conversation about the Hells Angels
23 not in furtherance not in furtherance of any conspiracy.
24 There is no plan to commit violence upon Hells Angels, just
25 a statement of fact that the Bay Area was known to be
26 location frequented by members of the Hells Angels.
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28 P.3, #12 Appears to be a narration of past events not in furtherance

of any conspiracy, and is more prejudicial than probative.

P.3,#13 Date, January 2006, is not specific; statement appears to be idle and boastful conversation not in furtherance of any conspiracy, and is more prejudicial than probative.

P.3, #14 Appears to be conversation not in furtherance of any conspiracy, and is more prejudicial than probative by mentioning the subject of wiretaps.

P.3, #15 Appears to be idle and boastful conversation not in furtherance of any conspiracy, and more prejudicial than probative by implying violence against officers when no such acts of violence ever occurred.

P.3, #16 Statement about “a confrontation” with Hells Angels, at an unspecified and unverifiable date or location, is extremely vague, and appears to be a boastful narrative of past events or idle conversation not in furtherance of a conspiracy. It also becomes a way for the government to introduce other acts of racketeering activity not given in their notice of racketeering activity, and is more prejudicial than probative.

P.3, #17 Statement is not specific, and appears to be idle conversation not in furtherance of any conspiracy; statement does not allege that any of the firearms or any “arrangements” were unlawful or connected to the Mongols; the summary does not allege that this talk of

1 firearms ever actually produced any firearms, and is
2 therefore more prejudicial than probative.

3

4 P.4, #18 Statement summary is not specific as to any particular rules,
5 and appears to be a statement as to the historical fact that a
6 chapter meeting took place on a certain date and is not in
7 furtherance of any conspiracy, and is more prejudicial than
8 probative.

9

10 P.4, #19 Statement is not specific, and appears to be a narrative of
11 past events and idle conversation not in furtherance, and
12 more prejudicial than probative. It should be noted that this
13 is the exact statement referenced by the Court at page 6 of
14 its order of October 21, 2011 as an example of an
15 inadequate summary of a coconspirator statement.

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18 P.4, #20 Statement appears to be a narrative of past events and idle
19 conversation not in furtherance of a conspiracy; it does not
20 “promote criminal activity” as alleged but address past
21 events; it discusses the legal defense fund previously
22 objected to, and is more prejudicial than probative.

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P.4, #21 Statement by two other Mongols as to their own
interpretation of their duties as members is idle conversation
not in furtherance of a conspiracy, and their personal views
are more prejudicial than probative.

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- 1 P.4, #22 Statement is boastful and idle conversation not in
2 furtherance of a conspiracy. There is no evidence that
3 Viramontes ever had access to the weapons or that anyone
4 ever attempted to “blow up” a courthouse, and is therefore
5 more prejudicial than probative.
- 6
- 7 P.4, #24 The date is not specific; observations of guns and narcotics
8 are not statements; the statements appear to be boastful and
9 idle conversation not in furtherance of a conspiracy. There
10 is no evidence that any “retaliation” or fire ever occurred, as
11 proposed by Soto, or that Shawley ever acquired automatic
12 firearms or silencers. The talk about the shooting of a Hells
13 Angel in the neck is a narrative of a past event.
- 14
- 15 P.4, #25 The date is not specific; The talk about the incident at
16 Laughlin and ATF attempts to infiltrate the Hells Angels in
17 Arizona is a narrative of a past event, and is more
18 prejudicial than probative
- 19
- 20 P.4, #26 The statement is only one member’s view that rival gang
21 members should be shot on sight, and is not a statement of
22 club policy, and is therefore not in furtherance of a
23 conspiracy and is more prejudicial than probative.
- 24
- 25 P.4, #27 The statement is only one member’s view as to the duties of
26 a Mongol, and is not a statement of club policy, and is
27 therefore more prejudicial than probative.
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- 1 P.4, #28 The statement is only a few members' view on why they
2 think club members should be armed, and is not a statement
3 of club policy, and is therefore not in furtherance of a
4 conspiracy and is more prejudicial than probative.
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- 6 P.5, #29 The statement about a past "truce" with the Mexican Mafia
7 is a narrative of past events and is not made in furtherance
8 of the conspiracy.
- 9
- 10 P.5, #30 The statement about having to pay money gained from his
11 narcotics sales to help pay other members' legal costs is a
12 narrative of past events and is not made in furtherance of
13 the conspiracy.
- 14
- 15 P.5, #31 The statement is only one member's view as to how he
16 would treat individuals who "disrespected" the Mongols,
17 and is not a statement of club policy, and is therefore more
18 prejudicial than probative.
- 19
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- 21 P.5, #32 Date, November 2006, is not sufficiently specific; The
22 statement is only one member's statement as to why he
23 decided to confront someone wearing a Hells Angel support
24 shirt, is a narrative of a past event and is not a statement of
25 club policy, and is therefore more prejudicial than probative.
- 26
- 27 P.5, #33 This is a statement by Garcia about another statement made
28 in the past by Cavazos, and is therefore a narrative of a past

1 event.

2
3 P.5, #34 This statement is a narrative of a past event in which the
4 declarant assaulted a Hells Angel with a stick, and is not
5 made in furtherance of a conspiracy.

6
7 P.5, #37 Date, December 2006, is not specific; this is a statement of
8 personal belief and motivation for joining the Mongols, and
9 is a statement of idle conversation not made in furtherance
10 of a conspiracy.

11
12 P.6, #40 Date, February 2007, is not sufficiently specific; this is a
13 narrative statement of past events and personal belief as to
14 what future actions the Mongols should take, and is a
15 statement of idle conversation, not a statement of club
16 policy or rules, not made in furtherance of a conspiracy,
17 and is more prejudicial than probative.

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19 P.6, #41 This is a narrative statement of personal belief as to what
20 the Mongols i, and is a statement of idle conversation, not a
21 statement of club policy or rules, not made in furtherance
22 of a conspiracy, and is more prejudicial than probative.

23
24 P.6, #42 This is a narrative statement of a past event, an attack on a
25 Mongol in San Diego, and a personal belief as to what
26 future actions might taken in retaliation, and is a statement
27 of idle conversation, not a statement of club policy or rules,
28 not made in furtherance of a conspiracy, and is more

- 1 prejudicial than probative.
- 2
- 3 P.6, #43 Date, April, 2007, is not sufficiently specific; no declarant
4 identified; this is a narrative statement of a past event, a
5 shooting incident at "Nickolas" and is not made in
6 furtherance of a conspiracy, and is more prejudicial than
7 probative because it expands the field of racketeering
8 activity beyond those events provided in the government's
9 notice of November 30, 2011.
- 10
- 11 P.6, #45 The summary of the statement is so vague as to not give
12 sufficient notice as to the content of the statement.
- 13
- 14 P.6, #46 This is a narrative statement of past events, and is a
15 statement of idle conversation, not a statement of club
16 policy or rules, not made in furtherance of a conspiracy,
17 and is more prejudicial than probative.
- 18
- 19 P.6, #47 Date, July 2007, is not sufficiently specific;
- 20
- 21 P.7, #48 This is a narrative statement of past events, attacking Hells
22 Angels, and boastful idle conversation, not a statement of
23 club policy or rules, not made in furtherance of a
24 conspiracy, and is more prejudicial than probative.
- 25
- 26 P.7, #49 This is a narrative statement of past events, namely past
27 problems between the Cypress Park Mongols and other
28 gangs, and is a statement of idle conversation, not a

- 1 statement of club policy or rules, not made in furtherance
2 of a conspiracy, and is more prejudicial than probative.
3
- 4 P.7, #56 This is a narrative statement of past events and is a
5 statement of idle conversation, not a statement of club
6 policy or rules, not made in furtherance of a conspiracy,
7 and is more prejudicial than probative.
8
- 9 P.8, #59 Date, September 2007, is not sufficiently specific; this is a
10 narrative statement of past events, an attack on a rival gang
11 member, and is a statement of boastful idle conversation,
12 not a statement of club policy or rules, not made in
13 furtherance of a conspiracy, unverified as to whether the
14 incident actually occurred, and is more prejudicial than
15 probative.
16
- 17 P.8, #63 Date, November 2007, is not sufficiently specific.
18
- 19 P.8, #64 Date, November 2007, is not sufficiently specific.
20
- 21 P.8, #65 This is a narrative statement of past events and history of
22 the Mongols and Hells Angels, and is a statement of idle
23 conversation, not a statement of club policy or rules, not
24 made in furtherance of a conspiracy, and is more prejudicial
25 than probative.
26
- 27 P.8, #66 Date, November 2007, is not sufficiently specific.
28

- 1 P.9, #69 Statement is a narrative of a past event.
- 2
- 3 P.9, #70 Date, December 2007, is not sufficiently specific; this is a
4 narrative of a past event and boastful idle talk, not in
5 furtherance of any conspiracy, and more prejudicial than
6 probative.
- 7
- 8 P.9, #71 Date, December 2007, is not sufficiently specific; this is a
9 narrative by a Mongol as to what occurred at a past incident
10 in Norco, California, it is not made in furtherance of any
11 conspiracy, and the violent nature of the admission of the
12 Mongol's admissions is more prejudicial than probative.
- 13
- 14 P.9, #72 Date, December 2007, is not sufficiently specific.
- 15
- 16 P.9, #73 Date, December 2007, is not sufficiently specific.
- 17
- 18 P.9, #76 This statement is boastful idle talk, and there is no evidence
19 that any overt act took place in furtherance of this
20 conversation about a supposed robbery. The statement
21 does not indicate that the robbery was being done on behalf
22 of the Mongols, only that this declarant was a Mongol and
23 that some other Mongols believed that the residence he
24 wanted to rob contained cocaine.
- 25
- 26 P.9, #77 Date, February 2008, is not sufficiently specific; this is idle
27 boastful talk and opinion of one Mongol, not made in
28 furtherance of any conspiracy, and the prejudicial effect

¹ outweights any probative value.

P.9, #78 This statement is merely a caution for members to be restrained in showing their club emblems in order to reduce the chance of violence against a member; it is not a statement in furtherance of a conspiracy, and the prejudicial effect outweighs any probative value.

8

10 P.9, #79 This statement is a narrative of a past event, a fight with
11 rival gang members, and is boastful idle talk, not in
12 furtherance of any conspiracy, and the prejudicial effect
13 outweighs any probative value.

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P.9, #78 This statement is merely a caution for members to be restrained in showing their club emblems in order to reduce the chance of violence against a member; it is not a statement in furtherance of a conspiracy, and the prejudicial effect outweighs any probative value.

P.9, #79 This statement is a narrative of a past event, a fight with rival gang members, and is boastful idle talk, not in furtherance of any conspiracy, and the prejudicial effect outweighs any probative value.

P.10, #82 The date, April 2008, is not sufficiently specific; this statement is a narrative of a past event, “scouting” looking for Hells Angels, and is boastful idle talk, not in furtherance of any conspiracy, and the prejudicial effect outweighs any probative value.

P.10, #83 The date, April 2008, is not sufficiently specific.

P.10, #84 The date, April 2008, is not sufficiently specific; the declarant “Buckshot” is not sufficiently specific; Buckshot’s statement is a narrative of a past event, a stabbing of two Hells Angels, and is boastful idle talk, not in furtherance of any conspiracy, and the prejudicial effect outweighs any

probative value.

P.10, #85 The date, April 2008, is not sufficiently specific; this statement is a narrative of a past event, a stabbing of two Hells Angels, and is boastful idle talk, not in furtherance of any conspiracy, and the prejudicial effect outweighs any probative value.

P.10, #86 The date, April 2008, is not sufficiently specific; this statement, about armed Mongols being on the lookout for any Hells Angels, essentially constitutes allegations of racketeering activity not presented in the government's notice of racketeering activity on November 30, 2011, and should therefore be excluded.

P.10, #87 The date, April 2008, is not sufficiently specific; this statement, about Mongols attending an event in Anaheim for the purpose of finding and assaulting Hells Angels, essentially constitutes allegations of racketeering activity not presented in the government's notice of racketeering activity on November 30, 2011, and should therefore be excluded

P.10, #87 This statement, about an armed attack on a Hells Angel supporter, essentially constitutes allegations of racketeering activity not presented in the government's notice of racketeering activity on November 30, 2011, and should therefore be excluded.

- 1 P.11, #89 The date, May 2008, is not sufficiently specific; this
2 statement is a narrative of a past event, a confrontation with
3 Hells Angels and their associate, and is boastful idle talk,
4 not in furtherance of any conspiracy, without any
5 corroboration, and the prejudicial effect outweighs any
6 probative value.
- 7
- 8 P.11, #90 The date, June 2008, is not sufficiently specific.
- 9
- 10 P.11, #91 The date, June 2008, is not sufficiently specific; this
11 statement is a narrative of a past event, a stabbing of a Hells
12 Angel on his motorcycle, and is boastful idle talk, not in
13 furtherance of any conspiracy, without any corroboration,
14 and the prejudicial effect outweighs any probative value.
- 15
- 16 P.11, #93 The date, June 2008, is not sufficiently specific; this
17 statement is a narrative of a past event, an altercation with
18 Hells Angel Sonny Barger, and is idle talk, not in
19 furtherance of any conspiracy, without any corroboration,
20 and the prejudicial effect outweighs any probative value.
- 21
- 22 P.12, #94 Not a statement.
- 23
- 24 P.12, #95 The date, July 2008, is not sufficiently specific; these
25 various statement are all narratives of a past event, an
26 altercation with Hells Angels in Los Banos, California, and
27 is idle talk, not in furtherance of any conspiracy, without
28 any corroboration, and the prejudicial effect outweighs any

1 probative value.

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3 P.13,# 100 This statement is a narrative of a past event, the murder of a
4 Hells Angel.

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6 P.13, #101 This statement is a narrative of a past event, the murder of a
7 Hells Angel in San Francisco, and is idle talk, not in
8 furtherance of any conspiracy, and the prejudicial effect
9 outweighs any probative value.

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11 P. 13, #102 Most of this is not a statement.

12
13 P.13, #103 These statements are narratives of past events, including
14 attacks on Hells Angels as well as speculation about who
15 had recently killed a Mongol, and is all idle talk, not in
16 furtherance of any conspiracy, without any corroboration,
17 and the prejudicial effect outweighs any probative value.

18
19 P.13, #104 This statement is a narratives of a past event, an altercation
20 with Hells Angels in Los Banos, California, and is idle talk,
21 not in furtherance of any conspiracy, and the prejudicial
22 effect outweighs any probative value.

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24 Dated: January 12, 2012 Respectfully Submitted,

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27 RICHARD B. MAZER
MICHAEL N. BURT
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1 Attorneys for Defendant
2 CHRISTOPHER ABLETT
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Certificate of Service

2 Service of the foregoing DEFENDANT'S OBJECTIONS TO COCONSPIRATOR
3 STATEMENTS was accomplished through the Northern District of California ECF electronic
4 filing system. All parties are subscribers to the ECF system.

6 || Dated: January 13, 2012

/s/ Richard B. Mazer